

Appln. No. : 10/829,135
Filed : April 21, 2004

non-obviousness], composed of real world facts, is entitled to great weight in a case." Rosemount, Inc. v. Beckman Instruments, Inc., 727 F.2d 1540, 221 U.S.P.Q. 1 (Fed. Cir. 1984). Such evidence "may often establish that an invention appearing to have been obvious in light of the prior art is not." Minnesota Mining & Manufacturing Co. v. Johnson & Johnson Orthopaedics, Inc., 976 F.2d 1559, 24 U.S.P.Q. 1321 (Fed. Cir. 1992).

Claimed Surface Area Relationship

Independent Claims 1 and 10 recite links having associated magnetic elements, where a face of the magnetic element comprises at least 50% of the total area comprising a rear of the link. The Examiner asserts it would be obvious to increase the *size and surface area* of a magnet associated with a link. Applicant previously submitted evidence that it would not be obvious to increase the size of a magnet associated with a link in a manner which would achieve such a surface area ratio, directly refuting the Examiner's position. Referring to the Declaration of Jeffrey Dunmire (previously submitted on February 3, 2006), the known configuration for magnetic jewelry is a link having a cylindrical magnet. As indicated in that Declaration, in accordance with that known magnet configuration, corresponding increases in the *size* of the magnet require corresponding increases in the size of the associated link, such that the resultant surface area ratio between the link and the magnet does not increase. See Declaration of Jeffrey Dunmire at ¶¶ 5 and 11-16. In other words, it is not obvious to increase the surface area of the magnet so that the surface area ratio between the link and magnet increases (since an increase in the size of the magnet would not reach this result).

The Examiner has refuted the submitted evidence of non-obviousness introduced via the Declaration of Jeffrey Dunmire indicating that, as to the alleged increases in magnetic therapy

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benefits of the claimed configuration, “[t]here is no body of evidence from a credible source that shows that magnetic therapy with a wrist bracelet products benefits in the human body.” Attached as Exhibit A hereto is an article from a third party source, Ron Lawrence, MD, providing evidence that magnetic therapy does in fact produce benefits, including for such problems as arthritis.

As indicated previously, while such benefits might suggest the use of a larger magnet, there is nothing in the prior art which suggests optimizing the surface area of contact of the magnet to the wearer (relative to the link or other object with which the magnet is associated) instead of merely increasing the total size of the magnet, in order to maximize the benefits received thereby. Again, Applicant asserts that Applicant’s solution is not only novel, but is non-obvious when considering the prior art.

Claimed Oval Magnet Shape

Relative to the oval shape of the magnetic element (see Claims 4, 12 and 15), the Examiner first asserts that it would be obvious to change the shape of FDP’s magnet to an oval shape “in order to change the aesthetics of the bracelet.” Applicant notes, however, that a change in the shape of the magnet does not change the aesthetics of the bracelet, and there would thus be no such motivation to change the magnet shape. First, a change in the shape of the magnet does not change the aesthetic appearance of the link, since the magnet is not visible, being located at the rear of the link. Second, the aesthetic appearance of the links themselves need not change even if the magnet shape changes (because the shape of the magnet can change without changing the link with which it is associated) such that, once again, the change in shape of the magnet does not relate to any change in aesthetic appearance of the link and thus provides no motivation for such a change.

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Moreover, Applicant notes that Claims 4, 12 and 15 do not claim magnetic elements having the same shape as the corresponding link (and thus a change in magnet shape is not required to change the link shape). In fact, in the preferred embodiment of the invention, oval magnets are utilized with rectangular links (i.e. the link shape and magnet shape are not the same, such that there is clearly no motivation for changing magnet shape to change the aesthetics of the bracelet, since the link shape is clearly independent thereof).

As part of this basis of rejection, the Examiner cites Kundert, indicating that "Kundert is applied to show that the aesthetics of the links can be changed from one shape to another" and that "Kundert is only used to show that a change in shape of a link in a linked bracelet is old and well known". Applicant notes that, even if true, these facts have nothing to do with the claimed shape of the magnet. In particular, Kundert discloses having link-shaped parts (1c) and cup-shaped parts (2c) of the same shape, but Kundert does not disclose or suggest providing magnetic jewelry having magnets of a particular shape (and less yet, magnets of an oval shape associated with non-oval links).

Second, the Examiner asserts it would be obvious to optimize the surface area of contact between the magnet face on the link (for health benefits) and that it would be obvious to do so by using a circular or square shaped magnet with a square link, and an oval or rectangular shaped magnet if the link is rectangular. For this additional reason, the Examiner asserts that it would be obvious to utilize an oval magnet as claimed. Applicant asserts that the Examiner's assertion is based upon hindsight. First, the Examiner has not cited any prior art showing magnetic jewelry having a link with an associated magnet having a shape other than circular/cylindrical, regardless of the shape of the link. Second, there are potentially an unlimited number of different link shapes and

Appln. No. : 10/829,135
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magnet shapes that might be utilized. However, Applicant claims the specific relationship of an oval magnet.

Moreover, Applicant has provided actual evidence of the non-obviousness of the claimed combination, refuting the Examiner's assertion. In the recent case of KSR Int'l v. Teleflex, Inc., 550 U.S. ___, (2007), the Supreme Court affirmed that secondary considerations such as commercial success, long felt but unsolved needs, failure of others, etc. are relevant to the determination of obviousness. The Court also affirmed that when the prior art teaches away from combining certain known elements, discovery of a successful means of combining them is more likely to be non-obvious (citing U.S. v. Adams, 383 S.Ct. 39, 40 (1966)). Applicant has provided detailed evidence that the prior art teaches away from the claimed configuration. See Declaration of Jeffrey Dunmire at ¶¶ 5-7 and 17. In particular, though magnetic jewelry has been produced for years, such jewelry is limited in configuration to links having circular/cylindrical magnets. Applicant has also provided evidence of various secondary considerations, including "long-felt need" and "failure of others" which directly support a finding of non-obviousness. See Declaration Jeffrey Dunmire at ¶¶ 11-16. Among this evidence is the fact that until the time of Applicant's invention, there was no known method suitable for associating magnets of shapes other than circular/cylindrical with a jewelry link. See Declaration of Jeffrey Dunmire at ¶ 16.

Other Issues

Relative to Claims 1, 10 and 15, Applicant also notes that, at most, FDP discloses plated magnetic jewelry. Claims 1, 10 and 15 both recite links constructed from solid titanium or precious metal. As indicated in the prior-submitted Declaration of Jeffrey Dunmire, this configuration

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overcomes problems associated with link plating, such as wearing and scaling which ultimately result in exposure of the base metal and resulting issues of skin discoloration and the like associated with steel and similar base metals. Applicant asserts that the prior art does not disclose this claim feature and that the submitted evidence establishes the non-obviousness of this claim element.

Relative to Claim 16, Applicant asserts that *no prior art discloses or suggests* the limitation claimed therein of links having a notch at a first end and an outwardly extending tongue at an opposing second end and wherein the magnetic element is offset in a lengthwise direction along the link by a distance which the notch extends into the first end.

Additional evidence of the non-obviousness of the claimed invention is that competitors, who would be viewed as "having ordinary skill in the art" have not created products having the features as claimed. For example, despite the fact that plated magnetic jewelry suffers from the above-mentioned problems, Applicant is unaware of any competitors who have solved those problems by utilizing solid precious metal links.

Summary

For at least these reasons, Applicant asserts that Claims 1, 4 and 10-19 are in a condition for allowance.

Respectfully submitted,

Dated: April 22, 2008 By:

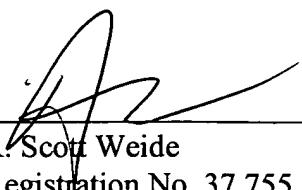

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EXHIBIT A

About.com: Holistic Healing

Controlling Chronic Pain With Magnetic Therapy

From [Phylameana lila Desy](#),
Your Guide to Holistic Healing.
[FREE Newsletter. Sign Up Now!](#)

Do Magnets Have Healing Power?

Guest article by Ron Lawrence, MD

Latest research suggests that magnets really do work.

Do Magnets have healing power?

Alternative practitioners have long said yes, and recent studies suggest that they may be right.

In a recent study published in the Archives of Physical Medicine and Rehabilitation, researchers at Baylor College of Medicine in Houston found magnets to be more effective than sham magnets at blocking pain caused by post-polio syndrome. (This syndrome, marked by leg pain, affects up to 20% of polio sufferers later in life.)

In the controlled study, 76% of patients treated with a magnet got pain relief. Only 18% treated with a sham magnet got relief.

Growing Body of Evidence

In other studies, magnets have proven effective against:

- **Fibromyalgia** - Researchers at Tufts University School of Medicine in Boston showed that magnets help relieve muscle pain caused by this mysterious condition.

In the study, patients who slept on magnetic mattresses experienced greater pain relief than patients who slept on ordinary mattresses.
- **Diabetic neuropathy** - In research conducted at New York Medical College of Valhalla, magnetic foot pads were more effective than nonmagnetic foot pads at relieving numbness, tingling and pain associated with this diabetes-related problem. Evidence suggests that roughly 80% of chronic pain sufferers could benefit from magnetic therapy. That is true for virtually any form of pain.

How Magnets Relieve Pain

When held against the skin, magnets relax capillary walls, thereby boosting blood flow to the painful area.

They also help prevent the muscle spasms that underlie many forms of pain-apparently by interfering with muscle contractions. And they interfere with the electrochemical reactions that take place within nerve cells, impeding their ability to transmit pain messages to the brain.

Of course, chronic pain can be controlled with aspirin and other over-the-counter and prescription painkiller. But unlike pain medications, magnets do not carry any risk of side effects.

Selecting Medical Magnets

Medical magnets come in a dizzying range of shapes, sizes and strengths. They range in price from about \$5 all the way to \$900.

It is usually best to start with one or more coin-shaped magnets made of the rare earth metal neodymium-boron. For most applications, these "neo" magnets work just as well as-and cost less than-other magnets.

Magnetism is measured in gauss. A typical refrigerator magnet is about 10 gauss. That is too weak to penetrate the skin-and unlikely to be helpful for anything more than a minor bruise.

Medical magnets range in strength from 450 gauss to 10,000 gauss. The higher the gauss, the better the pain relief.

Putting Magnets to Work

The magnet should be affixed to the skin directly over the painful area. Some people use ordinary adhesive bandages to affix the magnets. But Transpore, a paper tape made by 3M, works better. It holds well, and it doesn't pull the hairs from the skin when it is removed.

If the magnet fails to provide relief within a few days, reposition the magnet over the nearest acupuncture point. To locate these points on the body, consult a book on acupuncture.

If repositioning the magnet fails to bring relief within 30 days, odds are it's not going to work. Switch to another type of magnet or speak with your doctor about using pain killing medication or another conventional approach.

1. **Aching Feet** - Magnetic insoles can relieve foot pain and the achy feelings in the legs after you've been standing all day.
2. **Arthritis** - If pain is limited to your fingers, a neo magnet taped to the affected joint should do the trick. Or, you can wear a magnetic wrist band.
3. **Back Pain** - Place four magnets about 1.5" on either side of the spine, two per side. If applying and removing several magnets proves troublesome, use a three to four inch ceramic strip magnet or a magnetic back brace.
4. **Headache** - Tape magnets to your temples or to the back of your head, just above the neck. Or-use a magnetic headband.
5. **Tennis Elbow** - Use a magnetic band around the elbow. The same band also relieves hand and arm pain caused by repetitive strain injury.

About this Contributor: Ron Lawrence, MD. is the President of the North American Academy of Magnetic Therapy and co-author of Magnet Therapy - The Pain Cure Alternative